trademarks. To grant an injunction on this ground, it says, would be to do the great injustice of allowing one, who has asserted the excellence of his product, to exclude all his business rivals from using the same terms with equal truth; in short, it would be a prohibition of the use of the English language.

This view is certainly commendable. To acquire a right in a term as a trademark, it must be significant of the origin of the goods to which it is attached, and designed with the purpose of distinguishing them from articles of a like manufacture. These qualities coupled with priority of appropriation give a right to its exclusive use. *Columbia Mill Co.* v. *Alcorn*, 150 U. S. 460. The adjective in the principal case, which at best is only indicative of class or grade, is the property of all mankind, not subject to individual monopoly. A close analogy may be drawn from the use of geographical names which have never been regarded as subjects of private pre-emption. *Eastman Photographic Materials Co.* v. *Compt. Gen. of Patents, etc.*, 79 L. T. Rep. 195.

In some cases of trademarks suggestive of locality we find equity taking jurisdiction. It is not, however, on the ground of protecting any right in the label, though that may be the practical result. There is a sharp distinction between cases where a geographical name has been claimed as a trademark, and where it has, through long continued application to a certain class of goods, become a standard of superior excellence. In the latter case equity will restrain one living at a different place from fraudulently using such brand to the detriment of him whose business has gained peculiarly the public confidence. *Pillsbury-Washbourne Flour Mills Co.* v. *Eagle*, 86 Fed. Rep. 608. Here the jurisdiction of equity is based on a tort in the nature of fraud, closely analogous to the common law action of deceit, with this distinction, — the complainant is protected, not because he has been deprived of something which was his, but because what would otherwise have fallen into his pocket has been diverted by the defendant. The damage, too, is continuous and difficult of computation. The object being to suppress unfair competition without unduly restraining trade, wide discretionary control is necessarily vested in the courts. This power, however, could not be strained to the extent of prohibiting, where no fraud appears, the use of a familiar adjective, indicative of quality, which could be used truthfully by innumerable business competitors.

FEDERAL JURISDICTION OVER CORPORATIONS. — Shareholders in a company, on being incorporated in two different States, become members of two distinct corporations. Failure to follow this principle led to a doubtful decision in the recent case of *Taylor* v. *Ill. Cent. R. R. Co.*, 89 Fed. Rep. 119 (Cir. Ct. Ky.). A Kentucky statute provided that foreign corporations could not do business within the State without first going through certain formalities of incorporation and thereby becoming domestic corporations, "citizens of Kentucky." The defendant, then an Illinois corporation, complied with this statute. For negligence in the course of its business in Kentucky it was sued in a Kentucky court by a citizen of that State, and obtained a removal to the federal court. This removal has now been upheld on the ground that, for the purposes of this action, the corporation was still, roughly speaking, a citizen of the State of Illinois.

One would have thought it settled by *Chicago & Northwestern Ry. Co.* v. *Whitton*, 13 Wall. 270, that, from the point of view of federal jurisdiction, such a corporation is looked upon in every respect as belonging to the State within whose limits the action in question is brought. Strange as it may seem that the same stockholders are conclusively presumed in Illinois to be citizens of Illinois and in Kentucky to be citizens of Kentucky, this paradox is no stranger than is the conclusive presumption in any State that the shareholders in its corporations are citizens, when in fact they are not. And the proposition of Whitton's case is equally true whether the incorporation in the State where the action is brought took place at the same time as in another State, or at a subsequent time. The acts in either case were wholly distinct, and the resulting corporations are two, not one. If this is true, the defendant was a Kentucky corporation so far as the present action was concerned, and the federal court had no jurisdiction.

The only decision of the Supreme Court of the United States which trenches upon the theory here laid down is *St. L. & S. F. Ry. Co.* v. *James*, 161 U. S. 545. The defendant corporation in that case was first incorporated in Missouri, and later in Arkansas. The plaintiff, too, was a citizen of Missouri, and sued upon a cause of action arising in Missouri, in the federal court sitting in Arkansas. He sued the railroad as an Arkansas corporation. The whole matter was so extreme, so palpable the subterfuge, that the court may well have hesitated. They may well have deemed it improper in such a case for a citizen of the first State to use the new incorporation as a stepping-stone to the federal courts. Stress is laid in the opinion on the fact that not only was the plaintiff a citizen of the State where the stockholders first became a body corporate, but the cause of action arose there as well. On this ground the case of *Chicago & Northwestern Ry. Co.* v. *Whitton, supra*, is distinguished. A careful reading of the opinion reveals no intention on the part of the court to overrule a case, which is cited with approval — *M. & C. R. R. Co.* v. *Alabama*, 107 U. S. 581 — where the facts were similar to the principal case, the precise question was expressly discussed, and the opposite conclusion reached. The only modification of the accepted rule intended by the court was in a suit obviously collusive. The rule was left intact that a corporation such as the present one belongs to the second State for the purposes of actions brought by citizens of that State upon causes of action arising within its limits.

RECENT CASES.

BANKRUPTCY — EFFECT OF NATIONAL ACT UPON STATE INSOLVENCY LAWS. — The United States bankruptcy law declares that the act shall go into full force and effect upon its passage, but provides that no voluntary petition shall be filed within one month, and no involuntary petition shall be filed within four months from that time. *Held*, that the act superseded State insolvent laws from the date of its passage. *Parmenter Mfg. Co.* v. *Hamilton*, 51 N. E. Rep. 529 (Mass.).

The previous United States bankruptcy act of 1867 was generally construed so as to permit actions under the State insolvency laws during the period which elapsed between the passage of the law and the date when petitions could be filed. *Day* v. *Bardwell*, 97 Mass. 246; *Martin* v. *Berry*, 37 Cal. 208. The different conclusion reached in the principal case was based largely upon the construction of the words,